

November 6, 2017

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW – B204
Washington, DC 20554

Re: GC Docket No.: 02-278

Dear Ms. Dortch,

On behalf of the New York Credit Union Association, I am writing this letter to express the Association's support for the petition submitted by the Credit Union National Association seeking a declaratory ruling to give credit unions greater flexibility in using cell phones and text messages to provide informational messages to their members. The Association has been representing both state and federal credit unions in New York State for 100 years. The petition would: (1) provide much needed guidance in a needlessly confusing area of compliance; (2) update existing regulations to reflect technological changes; and (3) provide a consumer benefit to members that is consistent with the underlying purpose of the Telephone Consumer Protection Act (TCPA).

The TCPA makes it unlawful for a person to make any call using any automatic telephone dialing system or pre-recorded voice without the prior expressed consent of the called party (See: 47 U.S.C. 227 et. seq.) A text message is a call within the meaning of the TCPA. (Satterfield v. Simon & Schuster, Inc., 569 F.3d 946, 952 [9th Cir. 2009]).

Since 2012, the TCPA has also required businesses to get a consumer's approval before sending them commercial information, even if they have an existing business relationship with the consumer. Crucially, this restriction still permitted credit unions and other entities to make informational calls to members. Unfortunately, the information exception has only been interpreted as applying to landlines. This means that credit unions run the risk of violating the TCPA simply by texting non-commercial information to members with whom they have an existing business relationship.

The TCPA is becoming less of a consumer protection statute and more of a trip wire for class action litigation. When it was signed into law in 1991, the intent of the Congress was to protect the privacy interests of residential telephone subscribers by placing restrictions on unsolicited automated telephone calls (See: 132 ALR 625, originally published in 1996.) Today, credit unions must struggle with applying this statute's mandates and regulations to technology that was inconceivable at the time of the statute's adoption. Credit unions need clear cut guidelines. Unfortunately, the existing TCPA distinctions cause much confusion. For example, federal credit union regulations encourage the use of email to inform members of merger votes, while the TCPA places restrictions on electronic transmissions to someone's cell phone, even if it is purely informational. CUNA's suggested change would remove at least some of the uncertainty.

Credit unions are not for profit cooperatives. They are ultimately created by and for the benefit of members who work as equal partners to do what's best for their institution. Any regulation that places restrictions on the ability of members to communicate burdens the operation of credit unions. For

instance, members often want to know about potential loans or how they can keep up with their latest payments. Such common-sense requests should not be subject to a regulation that was designed to deter unsolicited marketing opportunities. A credit union reaching out to a member is by definition reaching out to someone who has taken several affirmative steps to become a member. In short, the very structure of credit unions ensures that credit union members are not subject to the harassment the TCPA was designed to prevent.

Finally, any regulation that continues to make a distinction between a cell phone and a landline is hopelessly outdated. According to some surveys, almost half of the American public now uses cell phones as their primary phones. Additionally, well over half of millennials don't have a landline. It simply makes no sense to distinguish between landlines and cell phones at a time when consumers make no such distinction and would be shocked to find out that their financial institutions still do.

Sincerely,

William Mellin

President/CEO

New York Credit Union Association